

Application Serial No: 10/064,924
Amendment dated: September 9, 2003
Reply to office action of May 9, 2003

Claim 14. (original) The method of Claim 11, wherein the gas impermeable body is
cylindrical
and is comprised of at least two portions.

REMARKS

1. With regard to item 1 of the present Office Action, Applicant believes that the requirements of claiming the benefit of a earlier filing date under 35 U.S.C. §120 have been complied with. Applicant attached to this response a copy of the Application Data Sheet (APDS) as submitted with the application via the electronic filing system on the filing date. The continuity data on the APDS contain the specific reference to PCT/RU01/00083 filed on 2001-02-26 and specify the relationship between the present application and the copending PCT application ("This application is a continuation of PCT/RU01/00083..."), which is in compliance with 37 CFR 1.78.
2. With regard to item 2 of the present Office Action, Applicant will submit to the Patent Office a certified copy of a Russian application RU2000014684 as soon as it becomes available from the Russian Patent Office and is shipped to the US.
3. With regard to item 3 of the present Office Action, a substitute APDS is enclosed with this response.
4. In compliance with item 4 of the Office Action, Applicant submits the substitute specification with a better translation of the original application into English in compliance with 37 CFR 1.52(a) and (b). Care has been taken to avoid adding new matter to the specification. Applicants is aware of the requirements of 37 CFR 1.125(c) for submitting a substitute specification. In this case, a substitute specification is an improved

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translation of the previously submitted translation of the application from the Russian language. In essence, an improved translation changes most of the sentences as previously translated and puts them in a better English grammatical structure. For that reason the whole substitute specification would have been underlined, which seems impractical in this case. Therefore, Applicant respectfully requests entry of the substitute specification as submitted without underlining every sentence in the substitute specification.

5. The specification has been corrected to address the objections raised in items 5 and 6 of the Office Action.

6. With regard to the rejection of Claims 1, 6, 8, and 9 under 35 U.S.C. §112, second paragraph, Applicant presents a better translation of the Claims. It is believed that Claims as properly translated are in compliance with the requirements of 35 U.S.C. §112, second paragraph.

7. Claims 1, 8 and 9 were rejected under 35 U.S.C. §102(e) as being anticipated by Hultquist et al. (U.S. Patent 6,132,494, "Hultquist"). Applicant respectfully disagrees with the rejection and asserts that Claims 1, 8, 9 as properly translated, are not anticipated by Hultquist.

It is well established that a claim is anticipated under 35 U.S.C. §102, only if each and every element of the claim is found in a single reference.¹ Moreover, to anticipate a claim under 35 U.S.C. §102, a single source must contain each and every element of the claim "arranged as in the claim."^{2,3} Missing elements may not be supplied by the

¹ *Veregal Bros. v Union Oil Co. of California*, 814 F.2d 628, 631, 2USPQ2d 1051, 1053 (Fed. Cir. 1987).

² *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 716, 223 U.S.P.Q. 1264, 1271 (Fed. Cir. 1984).

³ *Lewmar Marine Inc. v. Barient, Inc.*, 827 F.2d 744, 747, 3 U.S.P.Q. 2d 1766, 1768 (Fed. Cir. 1987), cert. denied, 484 U.S. 1007 (1988).

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knowledge of one skilled in the art or the disclosure of another reference.⁴ If each and every element of a claim is not found in a single reference, there can be no anticipation.

Applicant respectfully asserts that Hultquist describes a solid-phase physical sorbent medium having a sorbate gas physically adsorbed thereon and a chemisorbent material to chemisorb the impurities (Abstract of the Hultquist patent). Applicant's attorney studied the Hultquist patent and was unable to find any description of a solidified gas placed in a sorbent-free space inside the gas permeable body of the gas storage capsule of the present invention, as claimed in independent Claim 1. Therefore, independent Claim 1 cannot be anticipated by Hultquist under 35 U.S.C. §102(e). Withdrawal of the rejection and allowance of independent Claim 1 is hereby respectfully requested.

The former independent method Claim 8 referred to by the Patent Office is now independent method Claim 11 (the number of claims changed after detangling multiple dependencies in the originally submitted Claims in compliance with item 5 of the present Office Action. Similarly to the argument presented with regard to Claim 1, no mention or description of placing a predetermined amount of a solidified gas into the sorbent-free portion could be found in Hultquist. This is logical, because Hultquist does not teach, describe or even contemplate filling a capsule with a gas in its solid phase and placing that solidified gas into a sorbent-free portion of the gas impermeable body of the capsule. Therefore, Claim 11 and its dependent Claims are not anticipated by Hultquist under 35 U.S.C. §102(e). Withdrawal of the rejection and allowance of independent Claim 11 and its dependent Claims is hereby respectfully requested.

8. Claims 1, 3, 4 and 8-10 (as originally submitted) were rejected under 35 U.S.C. §102(b) under Alexander (U.S. Patent 3,964,649, "Alexander"). Applicant respectfully disagrees with the rejection, restates the legal standard for finding anticipation under 35 U.S.C. §102 and asserts as follows:

⁴ *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 780, 227 U.S.P.Q. 773, 777 (Fed. Cir. 1985).

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Sachet (17) in Alexander is made of an open cell plastic foam and, therefore, is not impermeable to a gas, as claimed in independent Claim 1. Moreover, Alexander describes filling the sachet with liquefied gas, not with a solidified gas placed in a sorbent-free portion of the gas impermeable body, as claimed in independent Claim 1. Therefore, Alexander does not disclose each and every element of independent Claim 1 and cannot anticipate Claim 1. Allowance of Claim 1 and its dependent Claims is respectfully requested.

Similarly to the arguments presented in support of patentability of independent Claim 1 and its dependent Claims, independent method Claim 11 (former Claim 8) and its dependent Claims are allowable over Alexander for the same reasons. Allowance of Claim 11 and its dependent Claims is respectfully requested.

9. Claim 2 was rejected under 35 U.S.C. §103(a) over either Hultquist or Alexander in view of Miles (U.S. Patent 3,122,284, "Miles"). Applicant respectfully disagrees and asserts as follows.

In order for an obviousness rejection to be proper, the Patent Office must meet the burden of establishing a prima facie case of obviousness. The Patent Office must meet the burden of establishing that all elements of the invention are disclosed in the cited publications, which must have a suggestion, teaching or motivation for one of ordinary skill in the art to modify a reference or combined references.⁵ The cited publications should explicitly provide a reasonable expectation of success, determined from the position of one of ordinary skill in the art at the time the invention was made.⁶

None of the cited patents (either Hultquist or Alexander in view of Miles) teaches or suggests or mentions a solidified gas placed in a sorbent-free space inside the gas permeable body of the gas storage capsule of the present invention, as claimed in independent Claim 2. Moreover, release valve (21) in Miles opens upon depression of

⁵ *In re Sang Su Lee*, 277 F.3d 1338, 61 USPQ2d 1430 (Fed. Cir. 2002).

⁶ *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996);

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actuator (35) (Col. 3, lines 17-18), whereas the present invention claims a valve which opens the sealed channel when a pressure inside the gas impermeable body exceeds a pressure outside the gas impermeable body by a predetermined value. Therefore, the rejection should be withdrawn and Claim 2 should be allowed. Moreover, Claim 2 depends off now allowable Claim 1 and is therefore allowable.

10. Claim 6 (present Claim 8) was rejected under 35 U.S.C. §103(a) over either Hultquist or Alexander in view of Zheng et al. (U.S. Patent 5,409,526, "Zheng"). Similarly to the arguments presented above, which are repeated in their entirety herein, neither Hultquist or Alexander in view of Zheng do not teach, suggest or mention a solidified gas placed in a sorbent-free space inside the gas permeable body of the gas storage capsule of the present invention. Moreover, Claim 6 depends off now allowable Claim 1 and is allowable.

11. Applicant respectfully requests allowance of all pending Claims. Applicant also respectfully asks the Examiner to telephone Applicant's attorney to discuss any questions arising out of consideration of the pending claims to expedite allowance.

Dated: September 9, 2003

Respectfully submitted,
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By Maria Eliseeva

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